
Appendix XII

Coastal Coordination Council Rule on Special Area Management Plan

Chapter 504. Special Area Management Planning

• 31 TAC §§504.1-504.8

The Coastal Coordination Council (council) adopts new Chapter 504, §§504.1-504.8, concerning the establishment of procedural requirements for the development of Special Area Management Plans (SAMPs) for the Texas Coastal Management Program (CMP) with changes to the proposed text as published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1916). All sections are adopted with changes.

This chapter is adopted pursuant to the Texas Natural Resources Code, Chapter 33, Subchapters C and F (Coastal Coordination Act), which require the General Land Office (GLO) to develop the CMP and the council to promulgate CMP goals and policies.

This new chapter describes a process by which local communities can tailor the CMP to meet local needs. In effect, the SAMP process becomes the "home rule" component of the CMP. Under this chapter, the council establishes procedures for the nomination and designation of geographic areas of particular concern (GAPC) and the development of a SAMP for a specific area.

Special area management planning as established in this chapter is a voluntary component of the CMP. Special area management planning provides local communities with the opportunity to develop a management program to address coastal issues or problems particular to the local area. SAMPs are appropriate where the goals and policies adopted by the council can be enhanced to address local concerns. The SAMPs can be used to enhance protection of unique coastal resources or facilitate intensive use of areas suited to development. Basically, SAMPs allow, but never mandate, heightened management for discrete, limited areas without requiring it for the coast as a whole.

This chapter provides a planning process that yields a coordinated and cooperative approach to address complex and often far-reaching environmental and economic issues. While specific applications of special area management planning may vary, common goals of all plans will be to address environmental and economic issues through a multi-jurisdictional and integrated policy approach. SAMPs may be developed for a large area, such as Galveston Bay, or a smaller area, such as a ship channel.

Section 504.1 defines the terms relevant to special area management planning. The provisions for nominating a GAPC are contained in §504.2. Any nonprofit or public citizen group, local government, political subdivision, federal or state agency, or the governor may nominate an area for development of a SAMP. This section also describes the information that must be included in the nomination.

Of particular importance is the discussion of the level of support for the nomination. Because this is a voluntary program that depends on local support, the council wants to ensure that there is local support before approving a SAMP. The procedures for determining the administrative completeness of the nomination are also included in this section.

Within 90 days of receipt of an administratively complete nomination, the council will complete a preliminary evaluation of the nomination. Section 504.3 establishes the procedures that the staff will follow in developing a preliminary evaluation.

Section 504.4 and §504.8 establish expedited procedures for consideration of a national estuary program's Comprehensive Conservation Management Plan (CCMP) as a SAMP. These procedures are appropriate because most CCMPs are developed over four to five years with significant public input. Much of the work needed to support a SAMP application, therefore, will already have been completed by the time CCMP development is finished. The expedited procedures eliminate duplication of effort, both public and private, and recognize the extensive public process used to develop CCMPs.

Section 504.5 governs submission of a workplan for development of a SAMP. If the executive committee of the council approves a nomination under §504.3, the nominating entity or its designee begins a scoping process to identify and assign priority to information and issues associated with the proposed SAMP. Section 504.5 also requires the establishment of a SAMP committee to draft a workplan for the development of the SAMP, sets a schedule for the development of the workplan, and describes the information which must be included in the workplan. This section also requires that the executive committee review the workplan and determine if it should be accepted and a SAMP developed.

The requirements for developing the SAMP are included in §504.6. The SAMP must include a description of the biological, physical, economic, and cultural values and functions of the nominated area, funding strategies, appropriate management strategies and goals, specific enforceable and nonregulatory policies to accomplish the identified goals, the implementation strategy, and other administrative provisions. The executive committee is responsible for reviewing the proposed SAMP and will recommend that the council approve or reject the nomination.

Section 504.7 establishes the procedures for council evaluation and adoption of the SAMP. The SAMP committee may recommend that the council adopt the enforceable policies of the pertinent SAMP, through rulemaking, after providing public notice and the opportunity for public hearings.

From its outset, the CMP has responded to the real concerns of Texans: addressing ero-

sion, protecting coastal natural resources and balancing environmental protection with economic development, among others. The council proposed the CMP as rules on March 18, 1994 (19 TexReg 1895). The council held seven public hearings, six of them in population centers along the entire length of the Texas coast. The period for public comment originally expired May 2, 1994. Including both public testimony at hearings and written comments, nearly 200 commenters offered more than 1,000 comments on virtually every portion of the CMP during the initial comment period.

In addition to substantive comments, the council received numerous requests for additional time to review the CMP. Numerous commenters also wished to review, before the council finally adopts the CMP as rules, revisions to the proposed rules. Ordinarily, members of the public who may be affected by a proposed rule, or have an interest in the rule, have little opportunity to review and comment on proposed staff revisions to a proposed rule before it becomes final. But the council has consistently valued and incorporated public participation in developing the CMP. Rather than satisfying only the minimum standards of uniform practice and procedure for a state agency in terms of public notice and comment, the council on June 28 voted to publish the CMP, with proposed revisions, in the *Texas Register* (19 TexReg 5195). This additional step was taken to ensure the widest possible opportunity for meaningful public review and comment before the council adopts the CMP.

Accordingly, the comment summaries and responses are divided into two parts. "Part A" contains comment summaries and responses relating to the comments received during the 60-day comment period following the publication of the interim draft of Chapter 504 in the July 5, 1994, issue of the *Texas Register* (19 TexReg 5195). "Part B" contains comment summaries and responses relating to the comments received during the original comment period following the publication of Chapter 504, in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1895).

General comments were received regarding the "CMP Document," which was the subject of the "Notice of Availability" in the March 18, 1994, issue of the *Texas Register*. The CMP Document contains descriptions of the enforceable and nonenforceable portions of the CMP. The enforceable portions of the CMP are Chapters 501, 504, 505, and 506 which respectively contain: the CMP goals and policies; special area management planning; council procedures for state and local consistency with CMP goals and policies; and council procedures for federal consistency with the CMP goals and policies. In addition to reflecting the council's balanced approach to the protection of the ecological and economic values of CNRAs, the CMP Document is prepared pursuant to the Texas Natural Re-

sources Code, Chapter 33, Subchapters C and F, and is intended to satisfy the federal requirements for approval under the Coastal Zone Management Act (CZMA), 16 United States Code Annotated, §1455(d). While portions of the CMP Document describe the provisions of Chapters 501, 504, 505, and 506, the chapters, not the CMP Document, are the council's enforceable policies; the chapter preambles, not the CMP Document, may be used to determine the intent of the chapters. Based on comments received, the CMP Document was reviewed and revised to ensure consistency and resolve any perceived inconsistency with the chapters. To the extent that any conflicts are perceived when reviewing the CMP Document and the chapters, or while implementing the chapters, the chapters prevail.

Editorial changes that do not alter the content of this chapter have been made to clarify meaning and to correct grammatical errors. In order to save space, similar comments and responses have been combined by section. General comments on the proposed chapter and comments on the preamble to the proposed chapter are combined at the end of the summary of comments.

Certain sections were revised based on comments received on the CMP proposed rules published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1895), and subsequently revised based on comments received on the interim draft of the CMP rules, published in the July 5, 1994, issue of the *Texas Register* (19 TexReg 5195). Paragraphs in "Part A" of this preamble which discuss such subsequent changes are *italicized* for the reader's convenience.

Part A.

Section 504.1.

Regarding §504.1(a)(1), two commenters stated that the definition of "affected parties" includes landowners adjacent to a GAPC. Section 504.2(d), in effect, defines "adjacent" as being "within 500 feet of the outward most boundary." Another commenter requested clarification of the meaning of "adjacent" in the definition of "affected parties" found in §504.1(a)(1). In response to these comments, §504.1(a)(1) has been amended by substituting a standard of 500 feet for "adjacent" for determining whether a person owning land near a GAPC is an affected party.

A commenter recommended that the definition of "affected parties" in §504.1(a)(1) be revised to include "political subdivisions." For clarification, the definition of "affected parties" has been amended to include political subdivisions that have jurisdiction over the GAPCs, rather than just local governments of general jurisdiction.

Regarding §504.1(a)(5), commenter suggested that the citation to the United States Code Annotated in the definition of "National Estuary Plan" should be corrected to read §1330. The paragraph has been amended accordingly.

One commenter requested that the definition of "nominating entity" in §504.1(a)(6) be amended to require that non-governmental nominating entities must have an office lo-

cated within the proposed GAPC or SAMP and to require that a majority of its membership must reside in and own land within the affected areas. Section 504.5(b)(5) requires that the membership of each non-governmental nominating entity include at least one landowner who owns land located within the boundaries of the GAPC. No authority to adopt or implement a SAMP is granted to the nominating entity; only the council has the authority to approve and adopt a SAMP. Meaningful participation by all affected parties, including nonresident landowners, is essential to the development of a SAMP that meets the needs and addresses the issues of all the parties. Section 504.2(d)(5) provides that landowners may opt out of a SAMP, and §504.5(d)(8) requires the consent of all landowners to include their property in the GAPC. No change was made based on this comment.

Section 504.2.

One commenter requested that the GAPC nomination process in §504.2 be clarified. A nomination must include a description of the type of SAMP, its boundary, management objectives, local support, potential conflicts, goals and objectives, and names and addresses of affected parties. Section 504.2(b)(5) has been amended to require that a majority of the landowners within the GAPC support the nomination of a GAPC area.

A commenter recommended that §504.2(a) be revised to delete environmental or industrial special interest groups from the list of entities that may nominate a SAMP. It was suggested that nominations should be accepted only from elected officials, accountable to the general public, who are charged with monitoring, regulating, and setting policies for the area. Another commenter requested that §504.2(b)(5) be amended to ensure that a nominated SAMP has the support of the municipalities and counties in the GAPC. Nomination of a SAMP by a non-profit or public citizens group is provided for in §504.2(a); however, §504.2(b)(5) has been amended to require that a nomination be supported by a majority of landowners and all municipalities and counties that have jurisdiction over any part of the nominated area. In addition, §504.5(b)(4) provides that a local official representing an area within the GAPC must be included in the SAMP committee. Therefore, regardless of who nominates the SAMP, a SAMP must be developed and implemented with the participation and support of local elected officials.

One commenter pointed out the possibility that more than one SAMP could be established for the same geographic area and expressed concern that the rules did not address this issue. Section 504.2(b)(2) and §504.5(d)(4) have been amended to require the identification of any areas included in an existing SAMP and to ensure that there are no conflicts in the goals and policies of the SAMPs covering all or part of the same areas.

Concerning §504.2(b)(5), one commenter noted that the "demonstration of the level of support for the nomination" of a GAPC is vague and gives no useful information about affected landowners' support or opposition.

Another commenter requested that this paragraph be changed to require "resolutions in support of the proposed nomination from all counties and municipalities with jurisdiction over the nominated area." Another commenter stated that it is unclear whether the resolutions from counties and municipalities must be in support of the proposed GAPC and that the paragraph is vague because it does not address what might occur if a governing body within the GAPC refuses to adopt a resolution. Another commenter requested that this subsection, in addition to demonstrating a level of support for and opposition to a GAPC nomination, should require that a nomination by a nonprofit or public citizen group demonstrate that a majority of affected landowners in the GAPC support the nomination. Section 504.2(b)(5) has been amended to require that a majority of the affected landowners support the nomination as well as the counties and municipalities with jurisdiction over the nominated area support the nomination.

At the September 16, 1994, council meeting, the member representing the Railroad Commission moved to amend §504.2(b)(8) to include mineral and leasehold interest owners. The motion passed and the paragraph has been amended accordingly.

Three commenters requested clarification of the notice requirements in §504.2(d). Section 504.2(d) has been revised to identify the notice requirements and to require that such notice must be provided to all affected parties, including local governments and all landowners, regardless of place of residence.

One commenter suggested amending §504.2 to provide that GAPCs must meet the requirements of the Texas Natural Resources Code, Chapter 63, Chapter 15 of this title (relating to Coastal Area Planning), and applicable local municipal ordinances or orders of a Commissioners Court. Section 501.10(c) of this title (relating to Compliance with Goals and Policies) states that compliance with CMP goals and policies does not supersede or eliminate any legal duty to comply with other applicable statutory and regulatory requirements. The CMP is a compilation of existing state and federal regulations which does not abrogate any duty to comply with other applicable law; therefore, no change was made based on this comment.

Three commenters expressed concern about inclusion of private property in GAPCs and recommended that the deadline for opting out be extended. As a matter of policy, the council deferred to the private landowners in developing the SAMP process so that landowners would not be affected by a SAMP plan if they opted out of the GAPC. The council added §504.2(d)(5) and §504.5(d)(8) to ensure that no landowner's property rights would be affected without their consent. The purpose of the SAMP process is to protect coastal environmental and economic resources by providing flexibility to local communities.

Regarding §504.2(d)(5), one commenter suggested the addition of a requirement that all proposals for delineating a GAPC meet the requirements of the Texas Natural Resources Code, Chapter 63, thereby eliminating private

landowners' rights to opt out of GAPC proposals. To protect private property rights, the council has made a policy decision to allow property owners to opt out. No change was made based on this comment.

One commenter suggested that the word "its" in §504.2(d)(5) is a typographical error. The word "its" is appropriate and refers back to the owner, which may be a person, persons, a business, or other entity. No change was made based on this comment.

One commenter was concerned that §504.2(d)(5) appears to be inconsistent with proposed §504.5(d)(8) requiring landowner consent in writing to be included in a SAMP. Another commenter requested that the "opt in/opt out" provision be clarified. The council developed the SAMP program with deference to private property owners who might not wish to participate in a SAMP program. A landowner may opt out of a GAPC pursuant to §504.2(d)(5). A landowner must also give written consent to be included within the nominated GAPC as stated in §504.5(d)(8). In addition, to clarify this option, §504.7(b) has been modified to reflect that a SAMP will not be approved by the council if the boundaries include land whose owner either elected to opt out of the GAPC or did not consent to have the land included in the GAPC.

Section 504.3.

One commenter expressed concern that §504.3 concentrates too much discretion at the early screening stages of a proposed GAPC. The preliminary evaluation of the proposed GAPC ensures that the nomination contains all the required information and that it complies with the guidelines of the SAMP program. The preliminary evaluation is not a final determination. In addition, the proposed SAMP must be approved by the executive committee of the council and, ultimately, by the council, thus ensuring the viewpoints of all council members are considered in the SAMP decision. No change was made as a result of this comment.

One commenter stated that time period for the preliminary evaluation of a GAPC in §504.3 of this title (relating to Preliminary Evaluation of a Nominated Geographic Area of Particular Concern) should be extended to 90 days in order to allow more opportunity for public comment. Section 504.3 has been amended to lengthen the preliminary evaluation period to 90 days and allow for a 90-day extension period upon request by the GLO staff.

Section 504.4.

Regarding §504.4, which provides for automatic acceptance of the nomination of a National Estuary Program (NEP) as a SAMP, seven commenters questioned the effect of this subsection on local governments and private property. Another commenter supported §504.4. Section 504.4 does not provide for automatic council approval of a SAMP designated under the NEP. While §504.4 provides that the council will accept the nomination of an NEP, §504.8 requires compliance with §504.7(b)-(e). In addition, §504.4 has been changed in response to this comment. The automatic nomination provision is not triggered until the local NEP Policy Committee

elects to take advantage of the benefits of SAMP approval. NEP Policy Committees include a balanced cross section of local interests, including local governments, local business, and local legislative representatives. Once the NEP Policy Committee initiates the SAMP process, the council must, prior to final approval, follow detailed public input procedures. This special procedure for NEP SAMPs takes into account that NEPs are the product of a four to five year development process which involves all stakeholders. Requiring NEPs to follow the standard SAMP nomination process would be duplicative and unnecessarily burdensome.

At the September 16, 1994, council meeting, the member representing the Texas Natural Resource Conservation Commission (TNRCC) moved to add an additional public notice and comment opportunity prior to a NEP plan becoming a SAMP. The motion passed and §504.4 was amended accordingly.

Section 504.5.

One commenter recommended that representatives of persons whose upstream activities are affected by a downstream SAMP be allowed on the SAMP committee and be allowed to opt out of a GAPC. No change was made because the goals and policies which are developed during the SAMP process apply only to those lands within the defined area of the GAPC and could have no impact on an upstream use that is outside the boundary.

One commenter requested that local governments be included in the SAMP scoping process in §504.5(a), even if they were not the nominating entity. Local governments are represented by the local elected official required to be a member of the SAMP committee pursuant to §504.5(b)(4). No change was made as a result of this comment.

Regarding §504.5(b), one commenter recommended changing "may" to "must" to ensure public participation of all parties affected. The concern of this commenter was addressed in response to other comments received on the March 18, 1994, issue of the *Texas Register* (19 TexReg 1894) proposed rules relating to SAMPs. Section 504.5(b) has been amended to provide that the SAMP committee *shall* include a balanced and representative cross section of the local community and lists a number of sectors that must be represented on the committee. Also added is a requirement for notification and invitation to all affected parties to participate in the formulation of the workplan for the proposed SAMP. No further change was made in response to this comment.

One commenter recommended that §504.5(b) be revised to require that at least a majority of the SAMP committee members, including the representative of local business or industry and representatives of the conservation organizations, reside within the GAPC boundary. Another commenter recommended that committee membership be restricted to residents of Texas to: ensure that local control will be maintained; and address local issues and to avoid placing coastal residents at risk of having mandated rules and regulations imposed upon them by outsiders. According to §504.5(b), the SAMP committee must in-

clude a balanced and representative cross section of the local community; however, limiting the committee membership to those residing within the GAPC would not allow the interests of all affected parties to be addressed. Furthermore, restricted membership as proposed by the commenter could exclude those with significant investments at stake in the GAPC. Finally, the nominating entity must extend committee membership to all affected parties and landowners within the nominated GAPC, thus ensuring adequate local control. No change was made based on this comment.

Regarding §504.5(b)(2), one commenter asked that this paragraph be revised by deleting "both" and "national or a local" because this provision represents twice as much representation as business, science, elected officials and landowners. The composition of the SAMP committee must include a representative cross section of the local community. To achieve balance among stakeholders, the SAMP committee includes two representatives with economic interests (a local business or industry representative and a local landowner who owns property in the GAPC), two conservation representatives, and two unaffiliated representatives (the scientist and the local government elected official). In response to this comment, the requirement that one conservation representative be affiliated with a national organization has been removed.

One commenter requested clarification regarding the qualifications of the scientist required to be a member of the SAMP committee under §504.5(b)(3). Section 504.5(b)(3) requires that the scientist be unaffiliated with any other listed committee member and possess expertise in coastal and marine issues. It is not appropriate to establish detailed rules for credentials, background, affiliations, or residence for the scientist in this chapter. The council puts a premium on flexibility and local control; therefore, these matters are best left to the nominating entity. No change was made based on this comment.

One commenter requested clarification regarding the requirement in §504.5(b)(4) that a local elected official be a member of the SAMP committee. Local elected officials meet the requirements of §504.5(b)(4) if the jurisdiction of their office includes all or part of the area covered by the GAPC. No change was made based on this comment.

Regarding §504.5(b)(5), one commenter requested clarification regarding the qualifications of the landowner required to be a member of the SAMP committee. A qualified landowner owns real property located within the GAPC. No change was made based on this comment.

One commenter requested clarification of the phrase "in writing," as used in §504.5(b)(6). The phrase "in writing" is mentioned twice in §504.5(b)(6). First, the invitation for membership on the SAMP committee shall be extended "in writing" to all affected parties and landowners within the nominated GAPC. Second, the nominating entity must notify the secretary of the executive committee of the council, "in writing," of the SAMP committee

participants. In addition, the written notice to the executive committee must be given as early as possible. In both contexts in which the phrase is used, it means written notification by mail and not a notice published in a newspaper. No change was made based on this comment.

One commenter requested clarification regarding use of the phrase "nominating committee" in §504.5(b)(6). This paragraph has been amended by substituting "nominating entity," for "nominating committee."

Section 504.6.

For purposes of clarification, §504.8(b) and §504.7(b) have been changed to reflect that the executive committee (in §504.6(b) and the council (in §504.7) have within their discretion the ability to reject the nomination of a GAPC which does not fulfill the other requirements of this chapter.

Section 504.7.

Two commenters asked that §504.7 be modified to allow a landowner to "opt out" at any time, either before or after adoption of a SAMP. No change was made pursuant to this comment, because of the administrative burden and uncertainty of developing a SAMP with a fluctuating boundary. If a SAMP is not working, landowners have the option of having the SAMP committee request that the SAMP be withdrawn.

One commenter suggested that it was unclear under §504.7 how a SAMP would be managed after council approval. According to this commenter, management must be by appropriate governmental agencies that are accountable to the public at large and not to any specific special interest group. After adoption of a SAMP, pursuant to §504.7(e), the enforceable SAMP policies are incorporated into the CMP. State agencies and political subdivisions would then be required to act consistently with these policies as provided in Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies). Because no staff members will be hired by the council, existing agencies will monitor permits and other regulatory aspects of their respective responsibilities relating to SAMPs. Section 504.8(a)(4) requires the designation of a lead agency to coordinate the SAMP monitoring activities of all involved entities including local, state or federal agencies. If the CMP receives federal approval, federal agencies would also be required to act consistently with the policies developed through the SAMP process. Special interest groups have the opportunity to participate and to serve on the planning committee, but will not be solely responsible for the management of a SAMP. No change was made based on this comment.

One commenter requested clarification of §504.7(b) regarding the procedures for adopting SAMPs other than those involving NEPs. Section 504.7(b) has been amended to provide that the council cannot approve a SAMP containing land for which the owner has opted out of the GAPC under §504.2(d)(5) or did not consent to the inclusion of the land under §504.5(d)(8).

One commenter requested that all SAMPs be available in city libraries, as well as county libraries. The council welcomes public support and participation in SAMP area programs. To this end, the council will make available all SAMPs for public use. Section 504.7(d) has been amended to reflect this request.

Concerning §504.7(h)(2)(D), one commenter stated that local government support should be a prerequisite for both the original SAMP applications and major amendments to the SAMP. Another commenter asked that the council require local government support as a prerequisite for major amendments to SAMPs. Because implementation of a SAMP requires support and, in some cases, monitoring and administration by a local government, §504.7(h)(2)(D) has been amended to include language which states that a resolution from a local government is required for council review of major amendments to the SAMPs.

Two commenters requested that §504.7(i)(1)(A) be changed to include that a request to withdraw approval of a SAMP should be considered by the council if such a request is made by the majority of SAMP committee members rather than requiring unanimous consent. In response to this comment, §504.7(i)(1)(A) has been amended to require the council to consider withdrawal of approval of a SAMP upon receipt of a request from a majority of the SAMP committee members rather than requiring a unanimous request from the committee. Based on comments received, §504.8 has been amended to clarify that draft CCMP policies must be enforceable and suitable for adoption as rules before the council will approve a CCMP as a SAMP.

General comments.

Two commenters expressed concern that this chapter would impose additional burdens on landowners and their ability to develop property and questioned whether any benefits would accrue to landowners that agree to participate in a SAMP. This chapter provides an opportunity for citizens groups and local governments to develop a plan to manage coastal resources. Before a SAMP is approved, property owners will be consulted in developing a plan as provided in §504.6, which requires an evaluation of all relevant factors in determining if an area should be adopted as a SAMP. A landowner will not be included in a SAMP unless consent is given pursuant to §504.5(d)(8). SAMPs will not impose any additional restriction on the use of property within the GAPC unless it is within existing statutory and regulatory authority. In addition, the landowners within the GAPC must have consented to the adoption and application of the policies. The rationale for the development of a SAMP, and the related consent of a property owner, is to achieve some goal or benefit for the GAPC that is permissible, but not necessarily available, under the CMP goals and policies. The council believes that the SAMP process provides valuable flexibility to local communities to develop a management plan which is unique to a specific area with assured predictability in its implementation. No change was made based on this comment.

Regarding this chapter, one commenter questioned the effectiveness of a SAMP where many landowners did not choose to participate and inquired about: the percentage of landowners needed to participate for a SAMP to be effective; what happens to those that do not participate; and enforceable policies of a SAMP and who they are enforceable against. As provided in §504.5(d)(3), the SAMP committee is required to develop the boundary for a proposed SAMP. Although no specific percentage of participation is required, if many landowners choose to "opt out," it may be prudent for the committee to redefine a SAMP which will have local support. Local support is also taken into consideration during council evaluation and adoption of the SAMP. For those landowners who "opt out" of a SAMP pursuant to §504.2(d)(5), their property remains subject to the applicable CMP goals and policies. For those property owners who choose to participate in the SAMP, the SAMP they have developed, which may allow more intense use or provide more resource protection than specifically provided in the CMP, will apply to their property upon adoption by the council. No change was made based on this comment.

Two commenters, while recognizing that some areas within the CMP boundary may require special management, requested clarification of the application of this chapter because the concept of voluntary GAPCs and SAMPs appeared to be unworkable. One of the commenters cited several areas of the coast as being in need of a SAMP program. The provisions of this chapter are not intended to be utilized to address general resource management problems. Pursuant to §504.5, the SAMP process is intended to provide the opportunity for local communities to develop plans for a specific or unique area nominated by citizens of that area for special management, whether for more intense use or for additional protection of the resources. During the development of the SAMP through the application of the requirements of §504.5, with the cooperation of landowners, it is possible to identify the area of particular concern, the nature of the concern, the qualities and values that need management, and the priority of uses in a manner that will protect both the ecological and economic vitality of CNRAs. No change was made based on this comment.

Part B.

Section 504.1.

One commenter requested addition of a definition of "coastal areas for intensive use" to §504.1. "Coastal areas for intensive use" is not a term of art and may include, for example, coastal areas of intensive use for high density or "clustered" development, as well as commercial or recreational harvesting of natural resources. Defining "coastal areas for intensive use" may have the unintended consequence of limiting this type of SAMP. Therefore, no change was made in response to this comment.

One commenter stated that the "guidelines" described in §504.1(a)(2) needed to be clarified and provided. The guidelines will be developed after adoption of this chapter, and

will be clarified during the guideline development process. No change was made based on this comment.

Regarding §504.1(a)(2) and "coastal areas for multiple use," one commenter stated that there must be a balance between the existing development and development projected for the future in an area containing important coastal natural resources. The commenter stated that a large amount of development in an area does not necessarily mean that a sensitive area should be sacrificed. The SAMP process does not prescribe the type of SAMP which may be developed; that decision is left to nominating entities. Therefore, the SAMP process does not contemplate the "sacrifice" of sensitive areas or place a preference on development. No change was made based on this comment.

One commenter asked that the phrase "program guidelines" be clarified in §504.1(a)(2). Section 504.1(a)(2) defines "approved program guidelines"; these guidelines will be developed to provide more specific criteria and standards necessary to develop SAMPs. Because the guidelines will be developed using a process specific to SAMPs, SAMPs cannot be approved prior to the establishment of guidelines. No change was made based on this comment.

One commenter requested that the definition of GAPC, provided in §504.1(a)(4), be amended to only include areas requiring preservation or restoration, to reflect the minimum federal requirements in the Code of Federal Regulations, Title 15, Part 923, Subpart C, §923.22. To provide the greatest protection to the ecological and economic resources of the Texas coast, this chapter provides a procedure for the designation of a variety of GAPCs, including GAPCs designated for the purpose of preservation or restoration. The Code of Federal Regulations, Title 15, Part 923, Subpart C, §923.22 (pertaining to designations of GAPCs for preservation and restoration) provides minimum federal requirements that states must follow to receive federal approval of a coastal management program. The CZMA, 16 United States Code Annotated, §1455a(b), and associated regulations provide that states may designate GAPCs for other purposes, such as waterfront redevelopment, ports, public access, and reasonable coastal-dependent economic growth. The definition of GAPCs, as provided in §504.1(a)(4), has been revised to clarify that a proposed GAPC must be the minimum size necessary to achieve the purpose of the GAPC nomination, and to better reflect the various purposes and requirements of GAPCs.

One commenter requested inclusion of "port authorities" in the definition of "nominating entities" in §504.1(a)(6), and two commenters requested the deletion of "nonprofit" or "public citizen group" from the definition, stating that such nominations involve improper delegation of traditional governmental functions. Regarding the first comment, port authorities and navigation districts created under the Texas Constitution, Article XVI, §59(b), are political subdivisions authorized to perform duties similar in nature to the duties of a state agency. Based on the quasi-governmental nature of port authorities and navigation dis-

tricts, §504.1(a)(6) and §504.2(a) were amended to specifically include "political subdivisions." Regarding the second comment, nonprofit and public citizen groups have not been deleted from §504.1(a)(6), as no unlawful delegation of authority is granted to the nominating entity pursuant to the SAMP nomination process. Only the council has the power to act on a SAMP nomination.

Another commenter stated that "nominating entity," as defined in §504.1(a)(6), should include individuals, and not be limited to specific groups. Another asked that private landowners be included as a "nominating entity." The CZMA, 16 United States Code Annotated, §1455(d)(14), requires state programs to provide for public participation in permitting processes, consistency determination, and other similar decisions. The council considers the designation of SAMPs to be the type of decision in which the public should participate. The rule provides guidance as recommended by the federal regulations regarding SAMPs, as provided in the Code of Federal Regulations, Title 15, Part 923, Subpart C, §923.21(b)(1)(i). Based on this comment, and to provide guidance in accordance with the Code of Federal Regulations, Title 15, Part 923, Subpart C, §923.22(b)(i), §504.1(a)(6) has been amended to require that the membership of each non-governmental nominating entity must include at least one person owning land located within the boundaries of the GAPC.

One commenter asked that §504.1(b)(3), identifying the meaning of the acronym "CNRA," be revised to specifically provide for protection and restoration of such areas. Because §504.1(b)(3) does not address substantive considerations, no change was made based on this comment. However, it should be noted that SAMPs may be developed to provide for protection and restoration of CNRAs, as this chapter allows for the development of SAMPs for economic, as well as ecological purposes. Development of SAMPs, including choice of the type of GAPC, is within the discretion of the nominating entity and the SAMP committee, as respectively defined in §504.1(a)(6) and §504.5(b).

Section 504.2.

One commenter stated that the SAMP process may affect a local tax base by imposing additional restrictions. One commenter stated that the SAMP nomination process provided in §504.2 fails to provide any meaningful participation by affected parties or individuals opposed to the creation of a SAMP. The commenter stated that the council's ability to designate and/or accept a SAMP over the objections of persons most directly affected contravenes the notion of a voluntary program. Another commenter suggested that only a property owner or subdivision owning or encompassing the CNRA should be allowed to volunteer the property for inclusion in a SAMP. Two commenters questioned whether the SAMP process was "voluntary," and one commenter recommended adding policies that govern the nomination and management of private third-party property nominated or included in a SAMP. Meaningful participation by affected parties is essential to the development of a SAMP. As proposed, the chapter could be interpreted to allow a

nominating entity to create a SAMP encompassing private property, without giving property owners and other affected parties personal notice or a meaningful opportunity to be heard. Many property owners along the Texas coast purchase property for a variety of uses, ranging from construction and use of vacation homes to construction and operation of industrial facilities. The SAMP program can be used to develop management plans individually suited for these various uses. To clarify what, if any, property may be eligible for inclusion in a SAMP, the definition of GAPCs, as provided in §504.1(a)(4), has been modified. Drawing on the current practice in the municipal zoning context, new §504.2(d) has been added to require that notice of a GAPC nomination be given to adjacent landowners within 500 feet from the outward-most boundary of a nominated GAPC and landowners within the nominated GAPC via first class mail. Section 504.2(b)(5) has been amended to require that the nomination include a demonstration of the level of support for and a description of the opposition to the SAMP, as well as any relevant resolutions passed by cities and counties with jurisdiction over the nominated area. In addition, §504.2(c) requires the nominating entity to publish notice of the nomination in a regional or local newspaper. Section 504.5 has been changed to require the participation of the local community members in the SAMP committee. Section 504.7(d) requires the executive committee of the council to hold public hearings in the city nearest to the nominated GAPC during the preliminary evaluation period identified in §504.3. Further, §504.1(a)(8) has been amended so that the definition of a SAMP no longer includes the word "voluntary." Further, a property owner will not be included in a SAMP if such property owner notifies the nominating entity of any objections to inclusion of the property pursuant to new §504.2(d)(5). Finally, the written consent of the property owners within the GAPC is now required in §504.5(d)(8). The increased opportunity for public input gives the public adequate opportunity to address any effects on the tax base which may result from a SAMP.

One commenter requested that §504.2 be amended to identify GAPCs on a generic and/or site-specific basis, and recommended that such amendments describe the nature of the concern for these areas, describe how the concerns are resolved and provide guidelines for priorities of uses in these areas. Regarding §504.2(b), one commenter stated that promoting the use of GAPCs conflicts with designating and specially managing these areas to protect their resources. The commenter stated that nominations of GAPCs should include a method of designating areas of preservation and restoration, and recommended adding the following areas of local concern to the CMP: Galveston Seawall and East Beach (dunes); San Luis Pass Flats (rookery); San Jacinto River; and Bermuda Beach subdivision on West Galveston and other subdivisions on Bolivar Peninsula. Another commenter supported the use of SAMPs for coastal areas for intensive use, and stated that the Houston Ship Channel may qualify as a GAPC. Based on these comments, the definition of GAPC, as pro-

vided in §504.1(a)(4), has been revised to more clearly identify the areas that may be subject to this chapter. The revised definition c. GAPC is intended to provide notice to persons owning an interest in coastal property that such property is eligible for nomination for a SAMP. The commenters' suggestions regarding specific GAPCs and SAMPs were not incorporated, as specific GAPC nomination and SAMP adoption may only occur pursuant to the procedures relating to GAPC nominations and SAMP adoptions, respectively provided in §504.2 and §504.7. No change was made regarding the identification of GAPCs as the chapter already addresses this issue in §504.1(a)(4).

Concerning §504.2(a), one commenter expressed concern that citizens are not able to nominate GAPCs. While it is true that individual citizens cannot nominate GAPCs, citizen groups can, pursuant to §504.1(a)(6). Because an opportunity for meaningful citizen input is provided, no change was made based on this comment.

One commenter stated that §504.2(c) should require notice by mail in addition to publication in the *Texas Register*, and that there should also be a 30-day comment period. Based on this and other comments received regarding public notice and notice to affected property owners, §504.2(c) and §504.2(d), now §504.2(e), have been amended to clarify the required timing and content of public notice and response to notices of administratively incomplete nominations.

One commenter asked that §504.2(d), now §504.2(e), be incorporated into the state and federal consistency review process. Because state and federal consistency involves council review of agency and subdivision actions, and SAMPs may frequently be created by non-governmental entities, SAMPs are not subject to consistency review. However, based on this and other comments received, §504.6(a)(8) has been amended to clarify that SAMPs must be in compliance with the CMP goals and policies.

One commenter stated that §504.2(c) fails to provide sufficient opportunity for public comment and, therefore, support for a nominated SAMP cannot be properly evaluated during the preliminary evaluation of a SAMP nomination, as required by §504.3. To address these concerns, the commenter suggested amendments to §504.2(c) which would allow the GLO staff a period of at least 60 days, as opposed to 30 days, to adequately solicit, receive and consider public comment during the preliminary evaluation of a SAMP nomination. Based on these comments, §504.3 was amended to allow for an extension of the 30-day time period to 60 days. In addition, based on this comment, §504.3 has been amended to clarify the nature of the GLO's recommendations to the executive committee of the council and the committee's role in approving or disapproving the recommendation, and §504.2(c) has been amended to require that nominating entities include a request for public comment, describe the GAPC, and give the address of the council secretary in the notice of acceptance of consideration of a SAMP nomination which is published in a regional or local newspaper. Section 504.2(d) has been added and re-

quires the council secretary to give notice to owners of property within the GAPC and within 500 feet of the GAPC. (Previous §504.2(d) is now §504.2(e).) Also based on this comment, §504.5(a) and (b) have been amended to require identification of conflicts and recommendations to address the conflicts as part of the scoping process.

Section 504.3.

Regarding §504.3, one commenter asked for amendments which would require the GLO staff to determine whether NEPs can be nominated as SAMPs on a case-by-case basis. Another commenter expressed concern regarding the "exemption" of NEPs from the SAMP nomination process. Because §504.3 provides that nominations of NEPs are automatically accepted by the council, it is not necessary to require the GLO staff to make such a determination. The intent of §504.3 is to avoid state duplication of the rigorous federal NEP development process, which addresses many of the same concerns as the SAMP development process. No change was made based on this comment.

Section 504.4.

One commenter asked for the addition of "coastal preserves approved by the GLO" to §504.4, relating to automatic acceptance of the nomination of a NEP as a SAMP. Unlike coastal preserves, NEPs are required to develop a CCMP, which takes approximately five years to develop. Much of the information required for a SAMP nomination will have been gathered during the process of developing the CCMP. Coastal preserves do not require the same rigorous development process as NEPs. Coastal preserves may properly be nominated as a SAMP; however §504.4 was not amended to provide automatic acceptance of coastal preserves as a SAMP.

One commenter asked if there was a memorandum of agreement (MOA) between the GLO and the TNRCC on NEPs and the CMP, as provided for in §504.4. The commenter requested public review and comment regarding this issue. Section 504.4 provides for the automatic acceptance of the nomination of a NEP as a SAMP. Provisions relating to an MOA are not included; however, MOAs could be developed on an as-needed basis, and the parties to the MOA would not necessarily be the GLO and TNRCC. No change was made based on this comment.

Section 504.5.

One commenter asked that §504.5 be amended to provide for an expedited SAMP approval process for areas which are relatively small and in which a majority of the affected parties are in agreement as to the SAMP. The suggested process would allow development of a SAMP without the detailed workplan required by §504.6, and the scoping process required in §504.5(a) would be used to write the SAMP. The commenter also suggested that the executive committee of the council should approve a SAMP through the expedited approval process. The SAMP committee is required to submit a workplan no later than six months after the date of approval of the nomination by the executive committee of the council; therefore, the SAMP committee may expedite the process

by submitting the workplan sooner. The scoping process consists of the preliminary phase of information gathering for the workplan, and may be used to develop the workplan. Pursuant to §504.7, only the council can approve a SAMP; therefore, the suggestion that §504.5 be amended to allow the executive committee of the council to approve a SAMP was not incorporated. However, §504.7(f) was added to allow the council to preview the SAMP upon the nominating entities written request.

One commenter stated that the language in §504.5(b) should be changed to require the participation of affected parties in the SAMP committee. The council will not compel participation in a SAMP committee; however, based on this comment, §504.5(b) has been revised to require that a nominating entity must invite the participation of affected parties, other interested parties and persons or groups with scientific expertise. The nominating entity must provide to the secretary of the executive committee of the council notice of the participants of the SAMP committee. In addition, §504.5(d)(3) has been amended to require that the workplan include a delineation of the boundaries of the property within the GAPC that is not included in the SAMP (pursuant to the landowner's request).

One commenter stated that the council should review the SAMPs to avoid wasting time on plans that will not be approved by the council. The council meets quarterly, and to require preliminary review of SAMPs by the council might result in undue delay of the SAMP process. The executive committee of the council is comprised of representatives of council members and is required to conduct a review of the SAMP prior to submission to the council in §504.7. However, the council will review a proposed SAMP upon the request of the SAMP committee pursuant to §504.7(f).

Section 504.6.

Many commenters asked that no changes be made to §504.6(a)(1)-(7). Based on other comments received on this subsection, changes were made.

One commenter asked that §504.6(b) and §504.7(a) be amended to require that the executive committee of the council set a specific schedule for revisions and the review of the revised plan by the executive committee of the council, and to include a time limit of no more than three months to accomplish these tasks. Based on this and other comments received, this chapter now includes §504.7(g)-(i), relating to amendments to SAMPs and withdrawal of council approval of SAMPs.

One commenter suggested that one of the required elements of the SAMP should be "a discussion of current state, regional and local plans and/or regulations which may impact the development of the SAMP." The suggestion to include a discussion of current state, regional and local regulations which may impact the development of the SAMP would better define the legal parameters of the SAMP; however, requiring a discussion of current state, regional and local plans is not practical because the nominating entity may not have access to all plans. Based on this

comment, §504.6(a)(9) has been added to require a description of current land management plans relevant to the SAMP.

As requested by one commenter, and to be consistent with the language of §504.7(a), §504.6(a)(8) has been amended to require inclusion of a discussion of the SAMP's proposed compliance with the CMP goals and policies.

Section 504.7.

Regarding §504.7(d), one commenter stated that it is as important to solicit public input from citizens residing throughout the state as it is to solicit input from coastal citizens because the coast belongs to all Texans. The commenter asked that the entire SAMP be subject to public review and comment. All Texans will have an opportunity to review and comment on a SAMP, because a SAMP's enforceable policies will be published as proposed rules in the *Texas Register*, and SAMPs will be published in their entirety in the "In Addition" section of the *Texas Register*. The commenter also stated that the SAMP program is not fully thought out. Regarding this statement, this chapter provides the minimum elements of the SAMP program. More specific information will be provided through the approved SAMP program guidelines identified in §504.1(a)(2) and through each SAMP. The public will have the opportunity to review and comment on the guidelines and individual SAMPs. No changes were made based on these comments.

One commenter requested that §504.7 be amended to provide standards for council approval and withdrawal of a SAMP nomination. Another commenter asked who would coordinate the SAMPs. The standards for approval of a SAMP are provided in §501.12 (relating to Goals). The council has the authority to review the proposed SAMP for consistency with the CMP goals and policies, and thereby coordinate the SAMP. Therefore, there is no need to impose additional standards on the council for reviewing SAMPs. However, §504.7(a) was amended to clarify the schedule for approval. Based on this and other comments, §504.7(g)-(i) have been added to provide procedures for withdrawal or amendment of a SAMP.

One commenter recommended that a seven member vote for approval of a SAMP should be required or, at a minimum, four votes. Based on this comment, §504.7(e) now requires the vote of at least four council members to adopt a SAMP, and §504.7(b) now requires the vote of at least four council members to approve a SAMP.

One commenter requested that §504.7(e) be amended to allow the council to adopt new enforceable policies for only those portions of the SAMP which are enforceable. Section 504.7(e) refers to the council's ability to incorporate the enforceable policies of a SAMP into the CMP. Therefore, such policies will not be "new," as they are incorporated from the SAMP, and only enforceable policies can be adopted. However, §504.7(e) was amended to clarify that only the enforceable policies of a SAMP will be incorporated into the CMP.

Section 504.8.

Concerning §504.8, one commenter asked for clarification of the schedule for the various steps that must be taken to adopt a NEP CCMP as a SAMP. Section 504.8 requires that such adoption must occur pursuant to §504.7(b) -(e). The schedule is dependent upon factors such as the timing of the submission of the CCMP to the council relative to the next regularly scheduled council meeting, publication of the enforceable policies as proposed rules in the *Texas Register*, publication of the SAMP in its entirety in the "In Addition" section of the *Texas Register*, and the schedule for public hearings and comment on the proposed SAMP. The length of time needed to complete these tasks may vary from NEP to NEP. No change was requested by this commenter, and no change was made to §504.8 based on this comment.

One commenter strongly supported §504.8 as written and asked that this section not be changed. Section 504.8 was not changed.

General Comments.

Regarding this chapter, one commenter asked what regulatory authority SAMPs would have. Another commenter was concerned SAMPs would supersede the CMP. SAMPs are a voluntary part of the CMP and, therefore, may not supersede the CMP. The SAMP will not have any separate regulatory authority. No change was made to the chapter in response to this comment.

Regarding this chapter, one commenter asked that the protection of the coast be the main focus of this chapter, rather than economics. The CMP embodies a balanced and reasonable approach to management of coastal resources, and the CMP's primary focus is on the economic and ecological value of the coast. However, in this chapter the focus of the various SAMPs is within the discretion of the pertinent nominating entities and the SAMP committees; this chapter does not mandate a preference. Therefore, no change was made based on this comment.

Two commenters were pleased to see that high intensity use is recognized as a basis for developing a SAMP. Three commenters generally supported the SAMP program and hoped that Galveston Bay and the Laguna Madre/Rio Grande would soon be included in the SAMP program. This commenter recommended that the specific reference to high intensity use SAMPs should also be provided in other sections. Another commenter concurred and recommended that §501.12 of this title (relating to Goals) and §501.14 of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas) be modified to clarify that the CMP goals and policies that apply within a SAMP are a function of the SAMP's specific use designation. The SAMP process established in this chapter recognizes that SAMPs may have policies which are unique to the property within the GAPC; however, the determination as to the applicability of specific CMP goals and policies to a particular SAMP will be made pursuant to the development of a SAMP workplan and the council adoption of a SAMP. No change was made based on these comments.

Regarding this chapter, one commenter inquired as to which entity would be responsi-

ble for developing the approved program guidelines. The guidelines will be developed by the council, aided by state agency staff.

One commenter stated that this chapter will not require consistency of local government projects. The commenter asked why the CMP should allow increased local management of the coast. Local governments provide the frontline protection of the economic and environmental benefits of the coast, and have a direct and continuing interest in protecting those benefits. However, this chapter balances increased local management of the coast with state and federal oversight. Under §504.1(a)(5), many entities will have a greater degree of involvement in managing the coast through the SAMP process, which provides a system for individualized management of areas, based on the specific requirements and uses of those areas. No change was made based on this comment.

One commenter suggested that SAMPs should be managed by a governmental entity with accountability to the public. The council will oversee the management of all SAMPs after council adoption of a SAMP. The council is the governmental entity responsible for managing SAMPs, and the council is accountable to the public. However, §504.6(a)(4) has been revised to require identification of the entity responsible for coordinating and tracking the SAMP. This revision does not affect the council's authority because the entity identified pursuant to the amendment to §504.6(a)(4) will be responsible for the SAMP on an administrative, as opposed to managerial, level. In addition, §504.7(j) has been added to provide the public with information and clarify the role of the council after a SAMP has been approved. Section 504.7(j) requires that every four years the GLO will provide the council with a report on existing approved SAMPs as part of the GLO's biennial report to the legislature in alternating biennia.

Another commenter expressed general approval of this chapter and encouraged the council to create a TNRCC office on the mainland of Galveston County, designated as the Central Office for Galveston Bay, to manage SAMPs in Galveston Bay. The creation of a TNRCC office remains within the TNRCC's discretion; therefore, no change was made based on this comment.

Groups and associations in opposition because they requested changes in, or otherwise expressed dissatisfaction with, the chapter were: City of Baytown; Baytown Refinery; City of Corpus Christi; The Fordyce Company; Friendswood Development Company; Galveston County Beach Park Board of Trustees; Greater Houston Builders Association; Gulf Coast Waste Disposal Authority; Harris County; Harris County Engineering Department; Harris County Flood Control District; Hollywood Marine, Inc.; Houston-Galveston Area Council; Houston Lighting and Power Company; National Marine Fisheries Service (Habitat Conservation Division); Nueces County Coastal Management Committee; Nueces County Economic Development Focus Group; Oryx Energy; Port of Brownsville; Society of Independent Professional Earth Scientists; San Jacinto River Association; South Texas Cotton and Grain

Association, Inc.; Texas and Southwestern Cattle Raisers Association; City of Texas City; Texas Chemical Council; Texas Department of Agriculture; Texas Ports Association; Texas Railroad Commission; Texas Water Conservation Association; United States Department of Commerce (National Oceanic and Atmospheric Administration); United States Environmental Protection Agency (Region VI).

Groups and associations expressing support for the chapter were: Galveston Bay Foundation; Galveston Bay National Estuary Program; Houston Audubon Society; Texas Chemical Council.

Groups and associations expressing general support or opposition to the CMP are listed under Chapter 501 of this title (relating to Coastal Management Program).

The new sections are adopted pursuant to the authority provided in the Texas Natural Resources Code, Chapter 33, Subchapter C, and the Texas Natural Resources Code, Chapter 33, Subchapter F (Coastal Coordination Act), which require the GLO to develop the CMP and the council to promulgate the CMP goals and policies, and the Texas Government Code, Chapter 2001, Subchapter A, which requires the council to adopt rules of practice setting forth the nature and requirements of all formal and informal procedures.

§504.1. Definitions.

(a) The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Affected parties**—Persons owning land in or within 500 feet of the outward most boundary of a geographic area of particular concern and those federal, state, and political subdivisions with jurisdiction over the geographic area of particular concern.

(2) **Approved program guidelines**—Special area management planning guidelines that describe program standards and criteria for nomination of a geographic area of particular concern, the evaluation and approval of workplans, and contents of special area management plans as required by this chapter. Guidelines shall be approved by the council.

(3) **Council**—The Coastal Coordination Council.

(4) **Geographic area of particular concern**—An area within the coastal management boundary (as identified in §503.1 of this title (relating to Coastal Management Program Boundary)) which is designated by the council as requiring special area management planning due to the area's ecological, geological, physical, scientific, recreational, aesthetic, historical or cultural values; or the area's potential for significant economic benefits, such as ports, harbors, and waterfront areas. Geographic areas of particular concern shall be at least the mini-

mum size necessary to achieve the purpose of the geographic areas of particular concern nomination.

(5) **National Estuary Program**—A program established for nationally significant estuaries designated under the Clean Water Act, §320, 33 United States Code Annotated, §1330, in order to convene a management conference whose primary objective is to develop a Comprehensive Conservation and Management Plan to protect an estuary's water quality and natural resources.

(6) **Nominating entity**—The governor or any nonprofit or public citizen group, local government, political subdivision or federal or state agency that submits a nomination of a geographic area of particular concern for consideration by the council, provided, however, any nominating entity comprised solely of a nonprofit or public citizen group must have at least one member who owns land located within the boundaries of the geographic area of particular concern nominated as a special area management plan.

(7) **Scoping process**—The organization of a special area management planning committee that identifies and assigns priority to information and issues to be addressed by the proposed special area management plan.

(8) **Special Area Management Plan**—A plan that includes in words, maps, or illustrations a detailed and comprehensive statement of policies providing for protection of coastal natural resource areas, other relevant coastal resources, and relevant economic growth and a statement of the mechanisms for timely implementation of the policies in a specific geographic area within the coastal area boundary.

(b) The following abbreviations, when used in this chapter, shall have the following meanings.

(1) **CCMP**—Comprehensive Conservation and Management Plan.

(2) **CMP**—Texas Coastal Management Program.

(3) **CNRAs**—Coastal natural resource areas, as defined in §501.3(a)(5) of this title (relating to Definitions and Abbreviations).

(4) **GAPC**—Geographic area of particular concern.

(5) **GLO**—General Land Office.

(6) **NEP**—National Estuary Program.

(7) **SAMP**—Special area management plan.

§504.2. Nomination of a Geographic Area of Particular Concern.

(a) **Nominating Entity.** Any nonprofit or public citizen group, local government, political subdivision, federal or state agency, or the governor may nominate a GAPC for consideration by the council. Nominations shall be submitted on a standard form to the GLO staff. Nomination forms are available upon request from the GLO staff.

(b) **Standard Nomination.** The nominating entity shall demonstrate that the proposed GAPC meets the approved program guidelines and shall include the following information relevant to the specific area:

(1) the type of GAPC as defined in the approved program guidelines;

(2) a delineation of the boundaries of the nominated GAPC, including identification of any geographic areas within the boundary that are already included in another SAMP;

(3) a description of the CNRAs and other significant resource(s), if any, within the nominated GAPC by location and size, and an identification of the entities having jurisdiction, ownership, management, trusteeship, and/or control over the specified natural resource(s);

(4) a discussion of the current management of the nominated GAPC;

(5) a demonstration of support for the nomination by a majority of landowners within the GAPC and from all counties and municipalities with jurisdiction over the nominated area;

(6) a discussion of potential and/or existing conflicts and/or issues affecting the nominated GAPC that warrant a SAMP;

(7) a description of the possible special area management goals and objectives that would apply to the nominated GAPC;

(8) names and addresses of affected parties, including affected local governments and mineral and leasehold interest owners; and

(9) a discussion of coordination with existing state or regional studies and/or programs occurring within the nominated GAPC that may provide sources of information or funds.

(c) **Determination of Administratively Complete Nomination.** Upon receipt of a nomination, the GLO staff will, within 15 working days, determine if the nomination form is administratively complete. After the GLO staff determines that a nomination form is administratively complete, notification of preliminary evaluation

according to §504.3 of this title (relating to Preliminary Evaluation of a Nominated Geographic Area of Particular Concern) will be sent to the nominating entity. The GLO staff shall also publish the acceptance of the nomination in the *Texas Register* "In Addition Section" and notify the public that comments on the nomination will be received during the 60-day period following publication of the notice of acceptance of the nomination. Upon receipt of the notification, the nominating entity shall publish in a regional or local newspaper (with the largest circulation in the pertinent county), at the earliest possible publication date, notice of the nomination for designating a GAPC at least two times during the preliminary review period. Such notice shall describe the GAPC, notify the public of the opportunity to comment on the proposed SAMP during the 60-day period following publication of the notice of acceptance, and include the address of the council secretary.

(d) The nominating entity shall provide or cause to be provided notice to all affected parties by United States Postal Service, first class mail, adequate postage prepaid, on or before the expiration of 15 days following the nominating entity's receipt of notice of an administratively complete nomination. Such notice shall include:

(1) a description of the boundaries of the nominated GAPC, using commonly known landmarks, such as roads, streets, and highways (if such landmarks cannot be used, a legal description may be required);

(2) identification of the type of GAPC proposed;

(3) a list of the names and addresses of members of the nominating entity, including a designated contact to receive more information, unless such information is protected from disclosure by law, in which case the name and address of the entity, not its members, shall be identified;

(4) citations of the laws authorizing the nomination of the area as a GAPC; and

(5) a statement that any landowner or mineral and leasehold interest owner may opt out of the GAPC by sending a certified letter requesting that its property not be included in the GAPC boundary, and that such letter be mailed to the nominating entity within 90 days after publication of the notice of an administratively complete nomination in the *Texas Register* pursuant to subsection (c) of this section. A mineral or leasehold interest owner may elect to opt out of a SAMP and bar the enforcement of any SAMP policies which restrict development of the mineral estate.

(e) Determination of Administratively Incomplete Nomination. If the nomi-

nation form is not deemed complete, then the nominating entity will be notified in writing of those sections not found to be complete, and the nominating entity must then complete the form in accordance with the GLO's request within 30 days and prior to taking any action.

§504.3. Preliminary Evaluation of a Nominated Geographic Area of Particular Concern. GLO staff will complete a preliminary evaluation of the nominated GAPC within 90 days after receipt of an administratively complete nomination form. During the preliminary evaluation period, GLO staff will determine whether the nominated GAPC complies with the approved program guidelines. The GLO staff may request from the executive committee of the council an extension to conduct the preliminary evaluation. The executive committee of the council may grant the request for an extension not to exceed 90 days. Upon completion of the preliminary evaluation, the GLO staff shall make its recommendation to the executive committee of the council. The GLO staff shall recommend to the executive committee of the council that the nomination either be rejected, in which case specific objections will be provided, or be accepted. The executive committee of the council shall either approve or disapprove of the GLO staff recommendation. The executive committee of the council shall inform the nominating entity of its reasons for disapproval of a nomination.

§504.4. National Estuary Program. In lieu of using the procedures for nomination of a GAPC in §504.2 of this title (relating to Nomination of a Geographic Area of Particular Concern) and §504.3 of this title (relating to Preliminary Evaluation of a Geographic Area of Particular Concern) and development of a SAMP in §504.5 of this title (relating to Submission of a Workplan for Development of a Special Area Management Plan) and §504.6 of this title (relating to Detailed Plan Development), a NEP Policy Committee may elect to nominate an area for which a CCMP has been developed under the NEP by submitting it to the council with a request that the enforceable policies of the CCMP be incorporated into the CMP rules as a SAMP for that area. Upon submission of the CCMP, the nomination shall be deemed accepted and the council shall consider adopting the CCMP as provided in §504.8 of this title (relating to Council Adoption of a Comprehensive Conservation and Management Plan). The council shall issue public notice of the receipt of the CCMP and shall provide an opportunity for the public to submit comments to the council prior to considering adoption of the CCMP under §504.8 of this title (relating to Council Adoption of a Comprehensive Conservation and Management Plan).

§504.5. Submission of a Workplan for Development of a Special Area Management Plan.

(a) **Scoping Process.** Upon receipt of approval from the executive committee of the council to develop a workplan, the nominating entity, or its designee, will begin the scoping process. Scoping is the process of identifying and assigning priority to information, conflicts, and issues associated with the proposed SAMP and making recommendations to resolve identified conflicts and issues as outlined in the approved program guidelines.

(b) **SAMP Committee.** The SAMP committee's primary objective is to draft a workplan for the development of a SAMP, including recommendations to resolve identified conflicts and issues. The SAMP committee will be established by the nominating entity and shall include a balanced and representative cross-section of the local community. The SAMP committee shall notify the secretary of the executive committee of the council in writing of all SAMP committee members and their affiliations. The committee shall be chaired by a member of the nominating entity and include at a minimum:

(1) a representative of local business or industry located within the GAPC;

(2) two representatives from environmental or conservation organizations organized for the preservation or enhancement of natural resources in the area;

(3) a scientist unaffiliated with any other member listed in this subsection with expertise in coastal and marine issues;

(4) a local elected official with jurisdiction over the GAPC; and

(5) a property owner who owns property inside the GAPC.

(6) In all events the nominating entity shall invite, in writing, all affected parties and landowners within the nominated GAPC to participate as SAMP committee members. The nominating entity will conduct meetings with the affected parties to discuss the scoping for the SAMP. The nominating entity must notify the secretary of the executive committee of the council in writing of all SAMP committee participants and their affiliations as early as practicable, but in no event later than 10 days prior to the first SAMP committee meeting.

(c) **Schedule for Development of a Workplan.** The SAMP committee must present a workplan to the executive committee of the council requesting its endorsement within six months of the date of approval of the GAPC nomination by the executive committee of the council. If the SAMP

committee has not produced a workplan within six months, then the nomination will be withdrawn from consideration by the executive committee of the council. The executive committee of the council may consider requests for extensions of time. Criteria for a SAMP committee to receive an extension of time include a showing of due diligence in preparation of a plan to date and a showing of cause for the extension in accordance with approved SAMP program guidelines.

(d) Minimum Criteria for Development of a Workplan. The workplan shall meet the approved SAMP program guidelines and shall at a minimum include the following information:

(1) the type of GAPC, as defined in the approved SAMP program guidelines, and a description of how the site meets the approved SAMP program guidelines;

(2) a list of persons on the SAMP committee;

(3) delineation of the boundaries, (including the delineation of properties within the boundaries of the SAMP which will not be included in the SAMP because the owners have elected not to participate), an inventory of CNRAs and, if appropriate, other resources in the GAPC;

(4) a discussion of the priority issues and conflicts within the GAPC to be addressed in the development of the SAMP, including a means of ensuring the SAMP goals and policies will not conflict with those of any other SAMP covering all or part of the same GAPC;

(5) a list of potential goals and/or objectives of the SAMP;

(6) a discussion of existing information and data that will be used in the development of the SAMP;

(7) a description of the support resources (e.g., technical, administrative, etcetera) that are necessary to develop the SAMP;

(8) the written consent of all landowners to have their property included within the nominated GAPC, unless the landowner has elected to opt out;

(9) a schedule for developing the SAMP; and

(10) an estimate of the entire cost of developing the SAMP and any known and potential sources of funding for development of the SAMP.

(e) Evaluation of the Workplan. A workplan must be approved by the executive committee of the council before development of a SAMP may occur. The executive committee of the council shall review the workplan to determine if it

complies with the approved SAMP program guidelines. The executive committee of the council may ask the SAMP committee to revise the workplan as necessary or may approve the workplan without revision. The executive committee of the council must issue its recommendation within 60 days of receiving the workplan for review. If the workplan is approved by the executive committee of the council, then development of the SAMP may begin in accordance with the approved workplan.

§504.6. Detailed Plan Development.

(a) Elements of the SAMP. The SAMP shall meet the approved program guidelines and shall include, at a minimum, the following information:

(1) a discussion of the biological, physical, economic, and/or cultural values of the GAPC;

(2) appropriate management strategies and goals to address the priority issues of the SAMP;

(3) specific enforceable policies and/or nonregulatory policies that implement the goals of the SAMP;

(4) implementation strategy, including the identification of the entity designated to lead in coordinating and tracking the SAMP, and the commitment of local, state, or federal agencies and the actions necessary to implement the SAMP;

(5) funding strategies;

(6) records of SAMP committee meetings and public participation at those meetings;

(7) a description of the potential economic effects of SAMP adoption;

(8) a discussion of the SAMP's compliance with the CMP goals and policies; and

(9) a description of any comprehensive land or resource management plans relevant to the SAMP which have been proposed or adopted by a government entity and any relevant laws and regulations applicable to the proposed SAMP policies.

(b) Evaluation of the Proposed SAMP by the Executive Committee of the Council. The SAMP shall be submitted to the executive committee of the council for its review and approval. The executive committee of the council shall have 60 days to review and comment on the proposed SAMP. The executive committee of the council may recommend that the proposed SAMP be revised and modified to meet the approved program guidelines. The executive committee of the council shall forward the proposed SAMP to the council with a recommendation that the proposed SAMP be either approved or rejected for the coun-

cil evaluation according to §504.7 of this title (relating to Council Evaluation, Adoption, Amendment, and Withdrawal of the Special Area Management Plan).

§504.7. Council Evaluation, Adoption, Amendment, and Withdrawal of the Special Area Management Plan.

(a) Evaluation of the Proposed SAMP by the Council. The council shall review the proposed SAMP within 90 days of the date that the proposed SAMP was forwarded to the council by the executive committee of the council according to §504.6(b) of this title (relating to Detailed Plan Development). The council may request that the SAMP committee revise the proposed SAMP to comply with the CMP goals and policies and the approved SAMP program guidelines. The proposed SAMP must be modified pursuant to the council's specifications before further action may be taken.

(b) Action on the Proposed SAMP by the Council. The council shall take action to approve or reject the proposed SAMP by vote of a majority of the council members eligible to vote. If the council votes to reject the proposed SAMP, specific objections shall be provided. If the council votes to approve the SAMP, the council may propose rules for those provisions of the SAMP that are enforceable policies within Chapter 501 of this title (relating to the Coastal Management Program). The council shall not approve a SAMP whose boundaries include land whose owner either elected to opt out of the GAPC under §504.2(d)(5) of this title (relating to Nomination of a Geographic Area of Particular Concern) or did not consent to have the land included in the GAPC under §504.5(d)(8) of this title (relating to Submission of a Workplan for Development of a Special Area Management Plan).

(c) Publication of Enforceable Policies. The council will publish the enforceable policies of the SAMP as proposed rules in the *Texas Register* prior to adoption by the council. The council will publish the proposed SAMP in its entirety for adoption as an amendment to the CMP as a miscellaneous document in the *Texas Register*.

(d) Public Hearings on the Proposed SAMP. Prior to council adoption of the SAMP, public hearings shall be held by representatives of the council at a location accessible to all Texans in the city closest to the GAPC, and notice of such hearings shall be provided in accordance with the Open Meetings Act, Texas Government Code, Title 5, Subtitle A, Chapter 551. Copies of the site description and any proposed rule shall be made available for public review at the public library in each affected county, city, and at the GLO in Austin.

(e) Council Adoption of the SAMP. After consideration of all comments received in response to *Texas Register* publications and the public hearings, the council may adopt the SAMP as an amendment to the CMP, provided at least four council members vote to adopt the SAMP. The council may adopt by rule only the enforceable policies of the SAMP as an amendment to §501.12 of this title (relating to Goals) and §501.14 of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas). Once the enforceable policies of the SAMP are adopted by the council, then those portions of the SAMP are enforceable, subject to the CMP.

(f) Notwithstanding any other provisions of this subsection, the council may preview a SAMP upon the written request of the nominating entity. The nominating entity shall follow the procedures in §§505.50-505.53 of this title (relating to Council Advisory Opinions on General Plans).

(g) Minor Amendment of a SAMP. This subsection only applies to SAMPs approved by the council.

(1) Identification of Minor Amendments to a SAMP. The amendments identified in this paragraph are considered minor amendments that do not require council review:

(A) editorial changes;

(B) amendments to the non-enforceable policies of the SAMP;

(C) amendments to a public outreach strategy provided in a SAMP insofar as they increase, rather than reduce, public participation in a SAMP;

(D) amendments to the funding strategies of a SAMP.

(2) Notification of Minor Amendments. The entity required to be identified, pursuant to §504.6(a)(4) of this title (relating to Detailed Plan Development), as the lead in coordinating and tracking the implementation of the SAMP will notify the GLO staff and the executive committee of the council of any minor amendments to the SAMP.

(h) Major Amendment of a SAMP. This subsection only applies to SAMPs approved by the council.

(1) Identification of Major Amendments. The amendments identified in this paragraph are considered major amendments that require council review:

(A) amendments to the GAPC boundaries;

(B) amendments to the enforceable policies of the SAMP;

(C) amendments to any memoranda of agreement adopted by federal agencies and state agencies and political subdivisions in reliance on the development and continued existence of the SAMP;

(D) amendments to the implementation strategy of the SAMP;

(E) amendments to the definition of a GAPC's natural resources;

(F) amendments to the management strategies of the SAMP.

(2) Council Review of Major Amendments. Before the council may approve a major amendment to the SAMP, the entity required to be identified, pursuant to §504.6(a)(4) of this title (relating to Detailed Plan Development), as the lead in coordinating and tracking the implementation of the SAMP must submit a written request to the council secretary for council review of the major SAMP amendments at the next regularly scheduled council meeting. The following items must be provided with the written request:

(A) an executive summary of the current SAMP;

(B) a description of reason(s) for the major amendment;

(C) a description of the proposed major amendment; and

(D) resolutions in support of the proposed major amendment from all counties and municipalities with jurisdiction over the SAMP area.

(3) The council shall review any proposed major amendment of a SAMP to determine whether such amendment is consistent with the council's initial evaluation and approval of the SAMP, pursuant to this section. If the council determines that a proposed amendment is not consistent with the council's initial approval of the SAMP, the council shall use the procedure established in subsection (i) of this section to withdraw approval of the SAMP.

(i) Withdrawal of Council Approval of a SAMP.

(1) The council shall consider withdrawing approval of a SAMP if:

(A) a request to withdraw

such approval is submitted by either a majority of members of the SAMP committee as identified by §504.5(d)(2) of this title (relating to Submission of a Workplan for Development of a Special Area Management Plan) or persons owning a majority of the area within the boundaries of the SAMP; or

(B) the council determines that a major amendment is inconsistent with the council's initial evaluation and approval of the SAMP pursuant to subsection (h) of this section.

(2) Prior to submission of a request for withdrawal of SAMP approval, the SAMP committee shall consult with all appropriate federal, state and local government entities and other persons identified as affected parties under §504.2(b)(8) of this title (relating to Nomination of a Geographic Area of Particular Concern). The SAMP committee shall also hold no fewer than two public meetings to inform the public of the proposal for withdrawal and solicit public comment. Along with the request for withdrawal, the SAMP committee shall include a summary of public comments received, a statement summarizing the support for and opposition to the withdrawal, and the resolutions addressing the proposed withdrawal from all counties and municipalities with jurisdiction over the GAPC.

(3) If the council has adopted rules incorporating the enforceable policies of the SAMP, withdrawal of the SAMP approval shall only be effective upon repeal or amendment of the provisions adopting the SAMP policies. The council shall hold at least one public hearing within the boundaries of the GAPC to solicit public comment prior to the repeal or amendment of these provisions. In all cases, a majority of all council members must affirmatively vote to withdraw approval of a SAMP.

(j) Council Evaluation of Approved SAMP. The GLO will prepare and provide the council with a report on existing approved SAMPs at least every four years, in conjunction with the preparation of the GLO's biennial report to the legislature in alternating biennia, as required pursuant to the Texas Natural Resources Code, §33.052(g).

§504.8. Council Adoption of a Comprehensive Conservation and Management Plan. If a NEP Policy Committee has nominated an area as a GAPC under §504.4 of this title (relating to National Estuary Program), upon approval of the CCMP under the Clean Water Act, §320(f), 33 United States Code Annotated, §1330(f), the council shall consider adoption of the enforceable policies of the CCMP as a SAMP for

the area covered. If the council finds that the CCMP contains draft enforceable policies in a form suitable to be proposed and adopted as rules, the council shall consider adopting those policies pursuant to §504.7(c)-(e) of this title (relating to Council Evaluation, Adoption, Amendment, and Withdrawal of the Special Area Management Plan). If the council finds that the draft enforceable policies contained in the CCMP are not in a form suitable to be proposed and adopted as rules, the council shall defer consideration of those policies pursuant to §504.7(a)-(e) of this title (relating to Council Evaluation, Adoption, Amendment, and Withdrawal of the Special Area Management Plan) until the entity or entities responsible for implementing the CCMP have drafted and submitted suitable enforceable policies.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on September 19, 1994.

TRD-9448284

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Council

Effective date: June 15, 1994

Proposal publication date: March 18, 1994

For further information, please call: (512) 305-9129

Chapter 505. Council Procedures for State Consistency with Coastal Program Goals and Policies

The Coastal Coordination Council (council) adopts new Chapter 505, §§505.10 and 505.11, 505.20-505.26, 505.30-505.42, 505.50-505.53, and 505.60-505.74, concerning council procedures for state consistency with the Texas Coastal Management Program (CMP) goals and policies, with changes to the proposed text published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1920). All sections are adopted with changes.

This chapter is adopted pursuant to the Texas Natural Resources Code, Chapter 33, Subchapters C and F (Coastal Coordination Act), which require the General Land Office (GLO) to develop the CMP and the council to promulgate CMP goals and policies.

This chapter describes the council's procedures for ensuring that state actions, local government actions, and general plans subject to the CMP will be consistent with the CMP goals and policies. The chapter is designed to keep the number of actions referred to the council for review at a manageable level based on the time, staff, budget, and other resources available to the council and to ensure that council review is reserved for

those actions most likely to adversely affect the ecological and economic vitality of coastal natural resource areas (CNRAs). The consistency review process rests on two basic assumptions: that the level of government closest to the action should take the lead role in assessing the action's coastal impacts and that public funds should be spent where the greatest benefit to CNRAs is likely to result. The only actions subject to council review pursuant to this chapter are those specifically listed in §505.11 and §505.60. These listed actions are subject to council review only if they adversely affect a CNRA designated in §501.2(a) of this title (relating to Findings). Section 505.11(d) helps to avoid bureaucratic delay and expedites the consistency review process by allowing an applicant, project sponsor, or other entity undertaking a project to request a coordinated consistency determination when more than one agency has jurisdiction over the proposed action.

Section 505.20 effectuates the council's intent to achieve consistency through individual agency rules and provides the procedure for council certification of agency rules governing actions which may adversely affect CNRAs. Pursuant to §505.11(c), after council certification of an agency's rules, an action to renew, amend or modify an existing permit, certificate, lease, easement or approval is not subject to council review if the action complies with the certified rules. Under §505.21, the certified rules are incorporated into the CMP goals and policies. Section 505.30 requires an agency to make a consistency determination or a determination that the action listed in §505.11 will not have adverse effects on a CNRA. Pursuant to §505.31, the council may, upon request, make a preliminary determination of the consistency of any individual agency action to assist relevant parties in structuring the proposed action to ensure compliance with the CMP goals and policies.

Most significantly, §505.26 allows an agency whose actions are listed in §505.11 to adopt thresholds for the referral of actions to the council. Once an agency's rules are certified and its thresholds are approved, then pursuant to §505.32, any action that does not exceed the approved thresholds is reviewable only if it: adversely affects a critical area, a critical dune area, a coastal park, wildlife management area or preserve, or a Gulf beach; was the subject of a formal hearing before the agency; another state agency participated in the hearing; and the other state agency contested the agency's consistency determination. An individual agency action that exceeds the approved thresholds is reviewable when: the agency actually authorized an action or took an action; the consistency issue was raised during the time the agency was considering the action; a request for referral was submitted; and no formal hearing was available before the agency; or a formal hearing or alternative dispute resolution process in the agency was used. These prerequisites must be met for an action to be reviewed by the council. In addition, the rule requires the council chairman or at least three other council members to accept the referral for consistency review before the council has jurisdiction to review the action. Sections 505.34-505.36 provide the procedural re-

quirements for council review of an individual agency action.

Minor procedural defects will not defeat the council's jurisdiction to review an individual agency action according to §505.34(e). This allows the council to expeditiously review individual agency actions even though certain ministerial requirements are not strictly complied with in the request for referral. The council must determine whether the proposed action is consistent with the CMP goals and policies within 70 days of the date the agency took the action.

Section 505.37 prohibits any person from conducting activities which may irreparably damage or alter a CNRA pending council review of the action. The council may affirm or remand the agency's determination pursuant to §505.38. Once the council remands the action to the agency, the action must be modified or amended. If the agency does not follow the council's recommendation, the agency must notify the council of the reason for its decision not to comply with the recommendation. Section 505.40 identifies the council's authority after remand of an action to an agency. It requires the chairman or three other council members to agree to review an agency's action on remand. The council is authorized to reverse the agency action and such reversal voids the action. The council's remedy after voiding an individual agency action is legal action against the agency which authorized the action. Section 505.42 specifically prohibits the council from requesting the attorney general to pursue legal action against any individual for failure to comply with the CMP goals and policies. In contrast to this limited power of the council, §505.41 allows any aggrieved person to appeal a reversal by the council.

Section 505.50 lists certain general plans governing state agency actions. A state agency may request the council to issue an advisory opinion on the consistency of a general plan by following the procedures in §505.51. An agency may also request the council's participation in the development of a general plan pursuant to §505.52. The council's opinion on any general plan is only advisory, not binding; however, such an opinion is designed to notify the public and the governmental entities operating under the plan that actions taken pursuant to the plan are likely to be consistent with the CMP goals and policies.

Only two local government actions are subject to council review. Section 505.60 provides that the issuance of dune protection permits and of beachfront construction certificates must be consistent with CMP goals and policies. The potential for council review of these actions is limited by the thresholds set in §505.61, which defines the types of dune protection permits and beachfront construction certificates which may be subject to council consistency review. Permits and certificates below the thresholds, if issued in accordance with §15.4 and §15.5 of this title (relating to Dune Protection Standards and Beachfront Construction Standards) are deemed to be consistent with CMP goals and policies according to §505.62. This section preserves local government autonomy in the

issuance of most permits and certificates. The remainder of Subchapter E of this chapter provides for preliminary consistency review of local government actions related to dune protection and beachfront construction and describes the procedures for referral to the council and the council's review procedures.

From its outset, the CMP has responded to the real concerns of Texans: addressing erosion, protecting coastal natural resources and balancing environmental protection with economic development, among others. The council proposed the CMP as rules in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1920). The council held seven public hearings, six of them in population centers along the entire length of the Texas coast. The period for the original public comment expired May 2, 1994. Including both public testimony at hearings and written comments, nearly 200 commenters offered over 1,000 comments on virtually every portion of the CMP.

In addition to substantive comments, the council received numerous requests for additional time to review the CMP. Numerous commenters also wished to review, before the council finally adopts the CMP as rules, revisions to the proposed rules. Ordinarily, members of the public who may be affected by a proposed rule, or have an interest in the rule, have little opportunity to review and comment on proposed staff revisions to a proposed rule before it becomes final. But the council has consistently valued and incorporated public participation in developing the CMP. Rather than satisfying only the minimum standards of uniform practice and procedure for a state agency in terms of public notice and comment, the council on June 28 voted to publish the CMP, with proposed revisions, in the July 5, 1994, issue of the *Texas Register* (19 TexReg 5237). This additional step was taken to ensure the widest possible opportunity for meaningful public review and comment before the council adopts the CMP.

Accordingly, the comment summaries and responses are divided into two parts. "Part A" contains comment summaries and responses relating to the comments received during the 60-day comment period following the publication of the interim draft of Chapter 505 in the July 5, 1994, issue of the *Texas Register* (19 TexReg 5237). "Part B" contains comment summaries and responses relating to the comments received during the original comment period following the publication of Chapter 505, in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1920).

General comments were received regarding the "CMP Document," which was the subject of the "Notice of Availability" in the March 18, 1994, issue of the *Texas Register*. The CMP Document contains descriptions of the enforceable and nonenforceable portions of the CMP. The enforceable portions of the CMP are Chapters 501, 504, 505, and 506 which respectively contain: the CMP goals and policies; special area management planning; council procedures for state and local consistency with CMP goals and policies; and council procedures for federal consistency with the CMP goals and policies. In addition to reflect-

ing the council's balanced approach to the protection of the ecological and economic values of CNRAs, the CMP Document, prepared pursuant to Texas Natural Resources Code, Chapter 33, Subchapters C and F, is intended to satisfy the federal requirements for approval under the Coastal Zone Management Act (CZMA), 16 United States Code Annotated, §1455(d). While portions of the CMP Document describe the provisions of Chapters 501, 504, 505, and 506, the chapters, not the CMP Document, are the council's enforceable policies; the chapter preambles, not the CMP Document, may be used to determine the intent of the chapters. Based on comments received, the CMP Document was reviewed and revised to ensure consistency and resolve any perceived inconsistency with the chapters. To the extent that any conflicts are perceived when reviewing the CMP Document and the chapters, or while implementing the chapters, the chapters prevail.

Editorial changes that do not alter the content of this chapter have been made to clarify meaning and to correct grammatical errors. To save space, similar comments and responses have been combined by section. General comments on the proposed chapter and comments on the preamble to the proposed chapter are combined at the end of the summary of comments.

Certain sections were revised based on comments received on the CMP proposed rules published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1895), and subsequently revised based on comments received on the interim draft of the CMP rules, published in the July 5, 1994, issue of the *Texas Register* (19 TexReg 5195). Paragraphs in "Part A" of this preamble which discuss such subsequent changes are *italicized* for the reader's convenience.

Part A.

Section 505.11.

One commenter noted that regarding §505.11, the council proposes to review agency rules in addition to agency decisions for consistency with the CMP. This commenter stated, however, that the legislature only authorized the council to review final agency "actions." The commenter specifically referred to the Texas Natural Resources Code, §33.205(a), which distinguishes between "rules and policies applicable in coastal areas" and "actions subject to the requirements of the Texas Natural Resources Code, §33.205(a)." This commenter also stated that mandatory rule review should be eliminated. Another commenter questioned why Public Utility Commission (PUC) certificates of convenience and necessity (CCN) are subject to the CMP. The Texas Natural Resources Code, §33.205(a), provides that state agencies "[i]n developing rules and policies applicable in coastal areas" shall take into account the CMP goals and policies. The council intends that consistency be achieved primarily through individual agency rules as stated in §505.10(b). The council is not requiring agencies to submit their rules for certification under §505.20. However, the agency's benefit in seeking such certification is the approval of thresholds for review of agency actions sub-

ject to the CMP (§505.21). Section 505.22 is also designed to allow agencies to limit the council's authority to review its actions. According to the Texas Natural Resources Code, §33.205(a), any agency actions, including PUC CCN's, that may adversely affect CNRAs must comply with the CMP goals and policies. Therefore, since all of the actions subject to the CMP listed in §505.11 are necessarily taken pursuant to specific agency rules, there is no conflict between the language of the Texas Natural Resources Code, §33.205(a), and the CMP. No change was made based on these comments.

One commenter noted that §505.11(a) provides for consistency review of certain actions outside the CMP boundary and stated that there should be no review of actions outside the boundary. The same commenter also stated that making the allocation of water rights subject to CMP goals and policies is too restrictive. To protect the ecological and environmental vitality of CNRAs, certain actions occurring outside the CMP boundary must be eligible for consistency review. Natural resources, such as hydrocarbons and water, may not be confined along political or legal boundaries. Extraction in one area may cause drainage in another. Allocation of water rights in §505.11 is the sole action outside the CMP boundary which is subject to the CMP. The allocation of water rights outside the CMP boundary affects fresh water inflows to coastal bays and estuaries. Freshwater inflows directly impact the salinity of the water in these bays and estuaries, thereby impacting recreational and commercial fishing. The council has found, in §501.2 of this title (relating to Findings), that fishing is valuable to the state as both a recreational and commercial activity, with both creating significant economic benefits for Texas. Thus, to protect this valuable economic and recreational activity, the council has prescribed a limited review of water rights allocations outside the CMP boundary. Since the protection of fishing is beneficial to all citizens of Texas, no change was made based on this comment.

One commenter requested that §505.11(a)(1)(B)(i) be amended by adding "in the appropriation" after "increase." The commenter also requested that §505.11(a)(1)(B)(iii) be amended by adding "in whole or in part" after "Trans-Texas Water Program as approved," and adding "or their designated representatives" after "three members of the council." These changes serve to clarify the intent of the provision and were made in response to this comment. Regarding §505.11(a)(1)(B), the word "or" was added after clause (i) and before clause (ii) of this subsection for additional clarification. Finally, §505.11(a)(1)(B)(iii) was renumbered for clarity, and is now §505.11(a)(1) (C)(i).

One commenter expressed concern that §505.11(a)(2)(D), as currently worded, could subject the same project to several consistency reviews. The commenter requested that the terms "transportation project planning" and "operation" be deleted from the list of actions subject to council review. The commenter further stated that transportation project operation is not an action subject to Texas Department of Transportation (TxDOT) authorization, but instead, results from con-